

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 3, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP576

Cir. Ct. No. 2013CV117

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

RANDI L. ERICKSON,

PETITIONER-RESPONDENT,

V.

**WISCONSIN PSYCHOLOGY EXAMINING BOARD AND DEPARTMENT
OF SAFETY AND PROFESSIONAL SERVICES,**

RESPONDENTS-APPELLANTS.

APPEAL from an order of the circuit court for St. Croix County:
ERIC J. LUNDELL, Judge. *Reversed and cause remanded with directions.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Wisconsin Psychology Examining Board and Department of Safety and Professional Services (collectively “the Board”) appeal an order denying a motion to dismiss a petition for judicial review pertaining to Randi Erickson’s disciplinary action. We conclude Erickson’s petition for judicial

review was not properly served on the Board, and the circuit court was therefore deprived of competency to proceed. Accordingly, we reverse and remand with directions to dismiss the petition.

¶2 Erickson is a psychologist, and a formal complaint against her was initiated by the Board. The complaint alleged Erickson engaged in unprofessional conduct and failed to provide records requested by the Board, thereby obstructing its investigation of her conduct. Erickson defaulted on the proceedings and her license was indefinitely suspended. A final decision and order in the disciplinary proceeding was served on Erickson on February 15, 2013.

¶3 On February 27, 2013, Erickson filed a petition for judicial review of the administrative decision and order. She did not serve a copy of her petition personally or by certified mail upon the Board or one of its officials pursuant to WIS. STAT. § 227.53(1)(a)1.¹

¶4 On April 23, 2013, the Board moved to dismiss Erickson's petition on the ground of improper service. The circuit court denied the motion to dismiss and remanded the matter for an administrative decision on the merits. The Board now appeals.

¶5 WISCONSIN STAT. § 227.53(1)(a) provides that a person aggrieved by an agency's decision must file his or her petition for review with the clerk of the circuit court, and serve the agency personally or by certified mail within thirty days of service of the agency's decision. Erickson does not dispute that she failed

¹ References to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

to properly serve the Board as required by § 227.53(1)(a). She nevertheless argues the dismissal of her petition would result in significant distress to her clients and the status of her clinic, and “corrective action was taken as soon as [I] became aware of this error.”

¶6 Even though the consequences may be harsh, Wisconsin courts have long adhered to the rule that the right to review of an administrative agency decision is dependent upon strict compliance with the rules of statutory service. *See DOT v. Peterson*, 226 Wis. 2d 623, 633, 594 N.W.2d 765 (1999). Failure to properly serve an agency in a timely fashion is considered “irremediable and deprives the court of jurisdiction.” *See Gimenez v. State Med. Examining Bd.*, 229 Wis. 2d 312, 321, 600 N.W.2d 28 (Ct. App. 1999).

¶7 In the present case, the circuit court failed to address the issue of its competency to proceed. Rather, the court considered issues regarding Erickson’s default in the administrative proceedings, concluding it was appropriate to remand the case for an administrative hearing on the merits. Because the circuit court lacked competency to consider the petition due to improper service, its decision and order must be reversed and Erickson’s petition dismissed.

¶8 Erickson insists the Board’s appeal to this court was untimely. However, the circuit court’s decision and order was dated December 11, 2013. In the absence of a written notice of entry of a final judgment or order pursuant to WIS. STAT. § 808.04(1), a notice of appeal to this court must be filed within ninety days of the judgment or order appealed from. The Board filed its notice of appeal on March 10, 2014, within the statutory timeline for appeal to this court.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5.

